

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 10, 2006 Session

SACHICO COPE v. JOHN DOE, ET AL.

Appeal from the Circuit Court for Coffee County
No. 32787 John W. Rollins, Judge

No. M2005-02036-COA-R3-CV - Filed on October 25, 2006

We affirm the trial court's finding that an unidentified driver caused plaintiff's car to be submerged by water thus triggering plaintiff's uninsured motorist coverage. Likewise, the amount awarded the dealership against the owner for repairs to the car are affirmed without reduction for "unworkman-like labor."

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which William C. Koch, Jr., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Glenda Hawkins Pipkin, Nashville, Tennessee, for the appellant, Permanent General Assurance Corporation.

B. Timothy Pirtle, McMinnville, Tennessee, for the appellee, Sachico Cope.

James D. Lane, Tullahoma, Tennessee, for the appellee, Roberts Nissan.

OPINION

I. FACTS

The owner of a Nissan 300Z, Ms. Sachico Cope, brought suit against a defendant known only as "John Doe" seeking to recover damages to her car allegedly caused by this unknown driver. Ms. Cope made her insurance carrier, Permanent General Assurance Corp. ("Permanent General"), an unnamed defendant, seeking to recover under her uninsured motorist coverage. The dealership that repaired the car, Roberts Nissan, sued Ms. Cope to recover the cost to repair the vehicle totaling

\$11,358.45.¹ The two related cases were consolidated. When the cases were consolidated, the plaintiff was misnamed “Sachico Vincent Cope.” Ms. Sachico Cope was later determined to be the car owner while her son, Vincent, used the car. The plaintiffs are actually Sachico and Vincent Cope.

According to the allegations in the complaint, while Ms. Cope’s son was driving her Nissan 300Z he met a pickup truck while driving over a bridge following a heavy rainfall. When the Nissan 300Z met the truck on the bridge, the truck caused a wave of water to “submerge” the Nissan 300Z causing engine damage. Since the unidentified driver caused the damage, the Copes argue Permanent General is liable under its uninsured motorist coverage. Permanent General, on the other hand, argues that the water damage to the 300Z was not caused by an on coming vehicle but resulted instead from the car being driven into deep water. Accordingly, Permanent General maintains it has no liability under the uninsured motorist coverage.

Ms. Cope took the car to Roberts Nissan for repair. After trying other alternatives, Roberts Nissan recommended to Ms. Cope that due to the water damage the engine required replacement. Roberts Nissan then replaced the engine which cost \$11,259.58. When Ms. Cope’s son picked up the car with the new engine, it is uncontroverted that when the mechanic started it white smoke came out of the exhaust, water dripped out of the exhaust, the engine thumped erratically, and the RPMs went up and down. According to Mr. Cope’s undisputed eyewitness account, Roberts Nissan had failed to drain water out of the turbo inner cooler. With regard to Ms. Cope’s defense below to Roberts Nissan’s claim, the trial court noted that the Copes “sought no affirmative relief” against Roberts Nissan. Instead, Ms. Cope argued that she did not owe for the repair bill because of Roberts Nissan’s “unworkmanlike labor.”

After a bench trial, the court found that John Doe was liable for the damage to Ms. Cope’s car.² The court further found that Permanent General was liable to Ms. Cope under her uninsured motorist coverage for the damage to the car caused by John Doe totaling \$11,259.85. The trial court awarded Roberts Nissan \$11,358.45 (including court costs and fees). The court did not allow Ms. Cope to reduce the amount she owed Roberts Nissan due to any damage caused by failure to drain the inner cooler.

¹The suit by Roberts Nissan originally began as a general sessions warrant and was appealed to circuit court after Roberts Nissan obtained a default judgment against Ms. Cope and her son, Vincent.

²With regard to the liability of John Doe, it should be noted that plaintiff alleged in her complaint that the conduct complained of was negligent. It does not appear that plaintiff’s allegations of negligence were contested at the hearing. The issue at the hearing dealt with causation. The trial court found John Doe liable without specifically holding that the conduct was negligent. While these issues were not raised on appeal, given that plaintiff alleged negligence and this allegation was undisputed, the trial court must have concluded John Doe was negligent since there were no other grounds to hold John Doe liable. Therefore, the trial court was not holding Permanent General “strictly liable” for acts of an unidentified motorist, but holding Permanent General liable under its uninsured motorist coverage for the negligent act of an unidentified driver.

Permanent General appealed and claims that the trial court erred in finding it liable since the damage was not caused by an uninsured motorist but by Mr. Cope's driving the car through deep water, which is not covered by uninsured motorist coverage. Ms. Cope appealed and claims the judgment entered against her should have been reduced due to Roberts Nissan damaging the new engine.

The parties all appear to agree that if the damage was caused by the truck driven by John Doe, then Ms. Cope is covered by the uninsured motorist coverage and Permanent General is liable. Therefore, the determinative question for Permanent General is whether the trial court erred in its finding of fact that the unidentified motorist caused the damage rather than the car being driven through deep water as alleged by Permanent General.

With regard to the suit between Roberts Nissan and Ms. Cope for the repair cost, Roberts Nissan does not dispute that after it replaced the engine it failed to drain the water adequately from the inner cooler. Ms. Cope and Roberts Nissan disagree, however, as to the extent of the damage caused by this failure. Therefore, the determinative question for Ms. Cope is whether the trial court erred in refusing to allow her a reduction in the amount awarded Roberts Nissan.

We review this case *de novo* on the record with a presumption of correctness of the trial court's findings of fact, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Brooks v. Brooks*, 992 S.W.2d 403, 404 (Tenn. 1999).

II. UNINSURED MOTORIST COVERAGE

We find that the evidence does not preponderate against the trial court's finding that the unidentified truck caused the damage to the 300Z. The driver of the 300Z, Ms. Cope's son, testified that the incident happened when he was half way across a bridge and an oncoming unidentified pickup truck created a wave that forced water over his vehicle causing it to stop immediately. He could not thereafter start the car.

The driver's testimony was corroborated by an unrelated eye witness, Mr. Tosh. According to the witness, when he was returning from his dog kennels after a heavy rain he saw Mr. Cope's 300Z crossing the bridge. When Mr. Cope was half to two-thirds of the way across the bridge, some "young kids" in a truck accelerated to meet the 300Z creating a "wave that just pushed it right up over the hood of his car up to the windshield." Mr. Tosh testified that it looked like the kids in the truck were "kids having fun." He saw them pause at the end of the bridge and then speed off. Mr. Tosh and his brother then helped Mr. Cope push the car off the bridge and road. The car would not start again. Mr. Tosh testified that prior to the incident with Mr. Cope, he had seen another car cross the bridge without incident.

Permanent General introduced testimony from one witness, Dr. Sissom, an expert in engineering. Apparently, Permanent General takes the position that the car could not have suffered the engine damage from water coming down on the car through the hood because of the way the

engine is enshrouded. The water engine damage was caused, according to Dr. Sissom, by water that entered the car's engine from below. This is the crux of Dr. Sissom's testimony and the primary point on which Permanent General relies. According to Permanent General, the trial court ignored this testimony when it found the unidentified driver caused the damage.

Dr. Sissom's testimony, however, is not inconsistent with the finding that the unidentified driver caused the damage. While it is true that the unidentified truck created a wave that caused water to be splashed on the hood, the wave also engulfed the 300Z up to the windshield. The top part of the wave was visible as water thrown on the hood. However, the lower part of the wave also raised the water level below the car, causing the entry of water into the engine as described by Dr. Sissom.

Based on the foregoing, we find the evidence clearly supports the trial court's finding that the damage was caused by an unidentified motorist. Therefore, Permanent General is liable to Ms. Cope for repairs to the vehicle under its uninsured motorist coverage.

III. REDUCTION IN JUDGMENT AGAINST MS. COPE

With regard to Ms. Cope's request that the award against her in favor of Roberts Nissan for the repair costs be reduced, we also affirm the trial court. While Roberts Nissan's mistake in failing to drain the inner cooler is not contradicted, there is no evidence as to what damage would be caused by such a failure or what damage was actually caused herein. It is uncontradicted that the 300Z ran after the new engine was installed and was driven over 400 miles. While Mr. Vincent testified that the car had problems after Robert Nissan installed the new engine, there was no proof that the problems were caused by failure to drain the inner cooler. Further, there was no proof as to the extent of any damage.

The only evidence heard by the trial court on causation was from Permanent General's expert, Dr. Sissom. Although he testified as an expert for Permanent General, the attorney for Roberts Nissan questioned Dr. Sissom regarding his opinion about the problems with the new engine after water was found in the inner coolers. Dr. Sissom testified that since the new engine ran, then in his opinion the engine was not damaged by the water left in the inner cooler. According to Dr. Sissom, the car could not have been driven "a number of miles" if the engine had sustained that kind of water damage. On further examination, Dr. Sissom testified that water infiltration in an engine could cause damage short of engine failure such as "pinging to be on the head of the piston."³ We

³While the testimony is a bit confusing, Dr. Sissom testified that in his opinion if water in the inner coolers had damaged the car then it would not run at all. The following are excerpts from Dr. Sissom's testimony:

Q. . . . Do you have a conclusion from the documents that you reviewed, an opinion as to the damage of the first engine and any damage to the subsequent new engine that was put into the vehicle?

A. Well, the new engine ran.

Q. All right.

(continued...)

assume his answers varied because there is a distinction between simple water infiltration and water in the inner cooler getting into the engine.

For this reason, we find the evidence does not preponderate against the trial court's findings, and the judgment against Ms. Cope is affirmed.

IV.

The trial court's judgment is affirmed in all respects. Costs of this matter are divided evenly between the Copes and Permanent General, for which execution may issue if necessary.

PATRICIA J. COTTRELL, JUDGE

³(...continued)

A. So it was not damaged by the water left over in the inner cooler, because it ran

. . . .

Q. And do you have an opinion as to whether or not that car could be driven a number of miles if, as the Copes claim, it has additional water damage?

. . . .

A. In my opinion, the engine would not have run for the number of miles it ran had it been damaged by water.

. . . .

Q. Now, water infiltration in an engine might cause damage other than seizure, might it not?

A. Sir, I would expect some pinging to be on the head of the piston.